IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

A.O.No. 277 of 2006
with
Civil Appln no.362 of 2006

The Mun Corporation of Gr Mumbai .. appellant
vs
Shyamsundar R Singh and anr.. respondents

Mr R A Malandkar for appellants
Mr. J N Jayale for respondent no.l

CORAM; A.M.KHANWILKAR J.
DATED 4.5.2006

P.C.

l. Even though this appeal challenges the orders passed in notice of motion nos.l882 of 2002 and l887 of 2002 respectively, the learned counsel is not able to explain why only one set of court fee has been accepted by the office. Office to ascertain this position and call upon the appellants to deposit the deficit court fee as will be computed by the office. The counsel for the appellant submits that the appellant will take steps to deposit the deficit court fee forthwith. That assurance is accepted.

2. Be that as it may, by the impugned order the trial court made both the notice of motions absolute. The respondent plaintiff had filed their notice of motion being notice of motion no.l882 of 2002 for the

following reliefs:

a) That the defendant their officers Shri Milind Sawant, Ward Officer, and Ast Municipal Commissioner H West Ward, Mr Mahendra Sawant Ast Engineer, H West Ward and other four persons deployed by the defendant came to the suit premises on l7.5.2002 at l2.30 p.m with the help or Santacruz (W) Police Station and partly demolished the suit structure as described in the plaint as a suit premises and committed breach of order dated l7.5.2002 passed by Honour Judge Shri V.B.Mantri in notice of motion no. l887 of 2002 in LC suit no. 25l5 of 2002 and committed breach of order passed by His Honour Judge Shri V B Mantri and therefore this Hon'ble court be pleased to pass an order against the defendant and their officer stated above who are guilty of disobedience of the order passed by the Hon'ble court on l7.5.2002 at l2.l5 p.m. and the property of the guilty person be attached and the concern responsible person be detained in the civil prison in accordance with the law.

b)Pending the hearing and final disposal of the suit the plaintiff be permitted to restore the suit premises in its original identity by reconstructing

the suit premises with identical raw material, which was existed on the date of filing of the suit, which has been wrongly partly demolished by the defendant at l2.30 p.m. to l.30 p.m. on l7.5.2002 with his own cost, with liberty to recover the cost from the defendants if they held guilty for the breach of order dated l7.5.2002.

c) Some fit and proper person be appointed as a court commissioner to visit the suit premises to ascertain whether it has been reconstructed by the plaintiff as per the description given in the plaint regarding the suit premises or not and file his report.

d) ad-interim and interim relief in terms of prayer (b) above"

Another notice of motion being notice of motion no. l887 of 2002 was filed for the following reliefs.

a) that pending the hearing and final disposal of the suit the defendants themselves, through their agents, servants and/or any person claiming through them be restrained by an injunction or order of this Hon‘ble court from enforcing their impugned notice bearing no. HW/52/SR-AEE/VI dated l5.5.2002

issued u/s 488 of the MMC Act i.e. Exh I to the plaint

b) Interim and ad-interim reliefs in terms of prayer clause (a) above".

3. In so far as the former notice of motion is concerned, I find substance in the argument advanced on behalf of the appellants that in view of the opinion expressed in para 9 of the impugned judgment on merits of the allegations, the question of making the notice of motion absolute in terms of prayer clause (a) did not arise. Parties agree that the order of the trial court will have to be understood as one granting interim relief in terms of prayer clause (b)only.

4. In so far as relief (b) of the former notice of motion is concerned, the learned counsel for the corporation submits that the court without going into the correctness of the stand taken by the respondent about the existence of the structure prior to the datum line has granted that relief, which cannot be countenanced. In my opinion, however, the trial court by the judgment under challenge has recorded a finding that prima facie case was made out by the respondent about the existence of the structure prior to the datum line. In any case, it is not disputed that after the

impugned order was passed on 3l.8.2005, the respondent has already constructed the suit structure and restored the same to the position which obtained earlier before its demolition. In that sense the relief granted by the trial court in terms of prayer clause (b) is already worked out. Even for this reason without going into the correctness of the stand taken by the Corproation and instead leaving the same open. no interfere is warranted in the present appeal.

5. In so far as the reliefs granted by the trial court in terms of prayer clause (a) of the notice of motion no. l887 of 2002 is concerned, for the reasons already recorded earlier that the trial court has opined that respondent has prima facie made out a case about the existence of the suit structure prior to the datum line, relief prayed for in terms of prayer clause (a) has been rightly been granted by the trial court.

6. Understood thus, no interference is warranted in the present appeal. The trial court, however, is directed to decide the suit expeditiously, preferably by the end of March 2007. This direction is issued on the assurance given by the counsel for the parties through their counsel that they will extend necessary cooperation to the trial court for early disposal of the suit. It is made clear that restoration of the

suit structure by the respondent under the orders of the trial court is entirely at the risk and cost of the respondent and the respondent shall claim no equity in the event the trial court would finally conclude that the suit structure is unauthorised. In that event the respondent will have to remove the structure and abide by the directions of the trial court as may be passed. The appeal as well as the civil application is disposed of on above terms.